

Steven Lubin
209 Linden Street
New Britain, CT 06051

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

State of Connecticut
Department of Public Health

vs.

Steven Lubin, LPN
Licensed Practical Nurse License No. 022703
Respondent.

CASE PETITION NO. 970210-011-002

MEMORANDUM OF DECISION

PROCEDURAL BACKGROUND

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Public Health (hereinafter the "Department") with a Statement of Charges and Motion for Summary Suspension dated April 11, 1997 (Department Exhibit 1). The Statement of Charges alleges, in three (3) counts, violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Steven Lubin (hereinafter the "Respondent") which would subject the Respondent's Licensed Practical Nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that the continued nursing practice of the Respondent presented a clear and immediate danger to public health and safety. On April 16, 1997, the Board ordered, pursuant to its authority under §19a-17(c) of the General Statutes of Connecticut, that the Licensed Practical Nurse license of the Respondent be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges (Department Exhibit 1).

The Board issued a Notice of Hearing dated April 16, 1997, scheduling a hearing for April 30, 1997 (Department Exhibit 1). The hearing scheduled for April 30, 1997 was continued at the request of the Respondent's counsel. (Transcript, April 30, 1997)

The hearing was rescheduled and took place on June 4, 1997, in Conference Room C, 470 Capitol Avenue, Hartford, Connecticut. The Respondent was not present during the hearing but was represented by counsel. (Hearing Transcript, June 4, 1997, p. 3)

During the hearing on June 4, 1997, the Department orally amended the Third Count Paragraph 11a. of the Statement of Charges by withdrawing reference to "Lomatil". (Hearing Transcript, June 4, 1997, p. 5)

The Respondent's counsel provided an oral answer to the Statement of Charges. (Hearing Transcript, June 4, 1997, pp. 47-48)

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

FACTS

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Steven Lubin, hereinafter referred to as the Respondent, was issued Licensed Practical Nurse License Number 022703 on June 1, 1988. The Respondent was the holder of said license at all times referenced in the Statement of Charges. (Department Exhibit 1-C)
2. On or about July 1996, the Respondent worked as a licensed practical nurse at Plainville Health Care and Buckley Nursing Home. On July 8, 1996 and July 11, 1996, the Department of Consumer Protection Drug Control Division received reports from Plainville Health Care and Buckley

Nursing Home that patient supplies of controlled substances and accompanying proof of use sheets were missing from the facilities. (Department Exhibit 1-A)

3. On or about November 1996, the respondent worked as a licensed practical nurse at Ledgecrest Health Care Center, Kensington, Connecticut. (Department Exhibits 1-A)
4. On November 6 and November 11, 1996, while working as a licensed practical nurse at Ledgecrest Health Care Center, the Respondent documented in controlled substance proof of use sheets, medication administration records, and nursing progress notes that doses of the controlled substance Tylox which he had signed out had been administered to patient L.A. Patient L.A. when questioned by the Assistant Director of Nursing denied receiving the doses of Tylox. (Department Exhibit 1-A) (Hearing Transcript, June 4, 1997, pp. 16-18)
5. On the evening of November 7, 1996 the controlled substances Vicodin and Lomotil were delivered to Ledgecrest Health Care Center by the facility's pharmacy, Value Health Care Services, Inc., Southington, Connecticut. Both controlled substances were received and signed for by a male nurse. The receipt of the Lomotil was cosigned by a second nurse, the receipt of the Vicodin was not cosigned. (Department Exhibit 1-A) (Hearing Transcript, June 4, 1997, pp. 40-41)
6. On the evening of November 7, 1996 the Respondent was the only male nurse on duty at Ledgecrest Health Care Center. (Department Exhibit 1-A)
7. On November 12, 1996, it was discovered that the controlled substance Vicodin and its accompanying records, delivered on November 7, 1996, were missing from Ledgecrest Health Care Center. It was further discovered that the delivery of the Vicodin had not been authorized by a physician. (Department Exhibit 1-A) (Hearing Transcript, June 4, 1997, pp. 20-22)
8. On November 11, 1996 a blister pack of the controlled substance Roxicet (Percocet) and its accompanying proof of use sheet for patient M.T. were found to be missing from Ledgecrest Health

Care Center. Medication administration records and nursing notes indicate the Respondent was the last person to access Patient M.T.'s Roxicet. Nursing notes the Respondent completed for November 7 and 8, 1996 indicate the Respondent administered Roxicet to patient M.T., however, corresponding medication administration records he completed indicate the medication was not administered because it had been discontinued. The physician for patient M.T. had not authorized the discontinuation of the Roxicet. (Department Exhibit 1-A) (Hearing Transcript, June 4, 1997, pp. 10-11, 22)

DISCUSSION AND CONCLUSIONS

In consideration of the above Findings of Fact, the following conclusions are rendered:

Steven Lubin held a valid Licensed Practical Nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges sufficiently provided legal notice as mandated by the General Statutes of Connecticut §4-177, §4-182 and §19a-17. The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as §19-2a-1 through §19-2a-30 of the Regulations of Connecticut State Agencies. The Notice of Hearing, Statement of Charges and the hearing process provided the Respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by the General Statutes of Connecticut §4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

The FIRST COUNT of the Statement of Charges alleges that in or about July of 1996, while working as a licensed practical nurse at Plainville Health Care, the Respondent:

- "a. diverted Xanax;
- b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records."

The FIRST COUNT of the Statement of Charges further alleges that in or about July of 1996, the respondent abused or excessively utilized Xanax.

The Respondent denies these charges. (Hearing Transcript, June 4, 1997, pp. 47-48)

The Board concludes the Department presented insufficient evidence to meet its burden of proof with regard to these charges. Therefore, the First Count of the Statement of Charges is dismissed.

The SECOND COUNT of the Statement of Charges alleges that in or about July of 1996, while working as a licensed practical nurse at Buckley Nursing Home, the Respondent:

- “a. diverted Tylenol with Codeine;
- b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records.”

The SECOND COUNT of the Statement of Charges further alleges that in or about July of 1996, the respondent abused or excessively utilized Tylenol with Codeine.

The Respondent denies these charges. (Hearing Transcript, June 4, 1997, pp. 47-48)

The Board concludes the Department presented insufficient evidence to meet its burden of proof with regard to these charges. Therefore, the Second Count of the Statement of Charges is dismissed.

The THIRD COUNT of the Statement of Charges, as amended, alleges that in or about November of 1996, while working as a licensed practical nurse at Ledgecrest Health Care Center, the Respondent:

- “a. diverted Demerol, Tylox, Roxicet, Vicodin and/or Percocet;
- b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records.”

The THIRD COUNT of the Statement of Charges further alleges that in or about November of 1996, the respondent abused or excessively utilized the controlled substances Demerol, Tylox, Roxicet, Vicodin and/or Percocet.

The Respondent denies these charges. (Hearing Transcript, June 4, 1997, pp. 47-48)

Based on its review of the evidence, the Board finds that the Respondent diverted the controlled substances Tylox, Vicodin and Roxicet (Percocet) while working as a licensed practical nurse at Ledgecrest Health Care Center. The Board also finds that the Respondent, in the process of diverting the controlled substances, failed to completely, properly and/or accurately document medical or hospital records; and/or, falsified one or more Controlled Substance Receipt Records.

The Board further finds that the Respondent's conduct of diverting controlled substances and the conduct of failing to completely, properly and/or accurately document medical or hospital records; and/or, falsifying one or more Controlled Substance Receipt Records is consistent with a pattern which indicates the abuse of drugs. The Board therefore concludes the Respondent abused the controlled substances Tylox, Vicodin and Roxicet (Percocet) which he diverted from Ledgecrest Health Care Center.

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes "... (2) illegal conduct, incompetence or negligence in performing usual nursing functions... (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals... (6) fraud or material deception in the course of professional services or activities...."

Based on its findings, the Board concludes that the Department has met its burden of proof by a preponderance of the evidence presented in this matter. The Board concludes that the Respondent's conduct as alleged in the Third Count of the Statement of Charges, as amended, with regard to Tylox, Vicodin and Roxicet (Percocet) is proven and that said conduct constitutes violations of the General Statutes of Connecticut §20-99(b)(2)(5) and (6). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The Board concludes the Department did not provide sufficient evidence to prove the allegations in the Third Count as it pertains to Demerol. Therefore, the Third Count of the Statement of Charges as it pertains to Demerol is dismissed.

ORDER

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. That the Summary Suspension of the Respondent's licensed practical nurse license, No. 022703, ordered on April 16, 1997, is vacated on the effective date of this Memorandum of Decision.
2. That for the Third Count of the Statement of Charges, the Respondent's licensed practical nurse license, No. 022703, is placed on probation for a period of three (3) years.
3. If any of the following conditions of probation are not met, the Respondent's licensed practical nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. During the period of probation the Board shall pre-approve the Respondent's employment or change of employment within the nursing profession.
 - B. The Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
 - C. The Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first year of working as a nurse during the probationary period.

- D. If employed as a nurse, the Respondent shall cause monthly employer reports to be submitted to the Board by his immediate supervisor during the entire probationary period. Employer reports shall commence with the report due on the first business day of the month following employment as a nurse.
- E. The employer reports cited in Paragraph D above shall include documentation of the Respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph P below.
- F. Should the Respondent's employment as a nurse be voluntarily or involuntarily terminated, the Respondent and/or his employer shall notify the Board, within seventy-two (72) hours, of such termination.
- G. At his expense, the Respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist during the entire period of probation.
- H. The Respondent shall provide a copy of this Memorandum of Decision to his therapist. The Board shall be notified in writing by his therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.
- I. The Respondent shall cause monthly evaluation reports to be submitted to the Board by his therapist during the entire probationary period. Therapist reports are due commencing with the report due on the first business day of October 1997.
- J. The therapist reports cited in Paragraph I above shall include documentation of dates of treatment, and an evaluation of the Respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph P below.

- K. At his expense, the Respondent shall be responsible for submitting to random urine and/or blood screens for alcohol and drugs for the entire probationary period, as ordered by his therapist, and/or personal physician, and/or employer, and/or the Board of Examiners for Nursing. Random alcohol/drug screens shall be legally defensible in that chain of custody procedures must be followed throughout the screening process. The Respondent shall be responsible for immediately notifying the laboratory, his therapist and/or personal physician and the Board of Examiners for Nursing of any drug(s) she is taking.

There must be at least one (1) such random alcohol/drug screen weekly during the entire probationary period.

Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

Random alcohol/drug screens must include testing for the following substances:

- Amphetamines
- Barbiturates
- Benzodiazepines
- Cannabinoids (THC Metabolites)
- Cocaine
- Meperidine (Demerol)
- Methadone
- Methaqualone
- Opiates (Metabolites)
- Phencyclidine (PCP)
- Propoxyphene
- Ethanol (alcohol)

Reports of random alcohol and drug screens shall be submitted directly to the Board, at the address cited in Paragraph P below, by the Respondent's therapist, personal physician or the testing laboratory.

- L. The Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for him, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. The Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.
- M. The Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine. For that reason, any food substance containing poppy seeds should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine, the ingestion of poppy seeds shall not constitute a defense to such positive screen.
- N. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- O. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- P. All correspondence and reports are to be addressed to:

**DEPARTMENT OF PUBLIC HEALTH
BOARD OF EXAMINERS FOR NURSING
LEGAL OFFICE - MONITORING & COMPLIANCE
410 Capitol Avenue, MS #12LEG
P. O. Box 340308
Hartford CT 06134-0308**

- 4. Any deviation from the terms of probation, without prior written approval by the Board of Examiners for Nursing, will constitute a violation of probation which will be cause for an immediate hearing on charges of violating this Order. Any finding that the Respondent has violated this Order will subject the Respondent to sanctions under §19a-17(a) and (c) of the General Statutes of Connecticut, including but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board of Examiners for Nursing shall not be a waiver or

preclude the Board's right to take subsequent action. The Board of Examiners for Nursing shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to the Respondent's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board of Examiners for Nursing).

5. This Memorandum of Decision becomes effective, and the three (3) year probation of the Respondent's licensed practical nurse license shall commence, on September 15, 1997.

The Board of Examiners for Nursing hereby informs the Respondent, Steven Lubin, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 3rd day of September 1997.

BOARD OF EXAMINERS FOR NURSING

By

A handwritten signature in cursive script, appearing to read "Nancy L. DeFuria", written over a horizontal line.